KOH YIAN GEOK (F)

v.

ZULKIFLI TAN BIN ABDULLAH

HIGH COURT MALAYA, JOHOR BAHRU
DATO' MOHD. GHAZALI BIN MOHD. YUSOFF J
[DIVORCE PETITION NO. 33-108 OF 1994]
1 MAY 1995

FAMILY LAW*: *Petition for divorce - Respondent's conversion to Islam - Claim for ancillary reliefs - Matimonial property - No contribution towards purchase of house and van by respondent - Whether proceeds from house and van to be divided - Whether house and van held on trust.

The petitioner and the respondent were married on 21 July 1980 and have a daughter who is 19 years of age. The petitioner filed a petition seeking a dissolution of the marriage on the ground of the respondent's conversion to Islam on 27 December 1993 and also prayed for ancillary reliefs respondent.

The petitioner claims that she bought the matrimonial property (the said house) on 21 June 1989 for the sum of RM22,000 and to support her claim produced the sale and purchase agreement, and a copy of the title to the said house which confirmed that she was the purchaser. She also produced a receipt for the sum of RM2,200 issued in her name for the down-payment for the said house and a copy of the loan agreement which she entered into for purchase of the house. She claimed that she had been working in Singapore as a masseur and had been paying the monthly instalments due upon the said loan and insisted that the respondent being unemployed since 1983 had never made any contribution towards the purchase of the said house nor towards repayment of the loan. She left the said house in January 1994.

The petitioner also prayed for an order that the respondent return to her a set of jewellery which had been taken from her on 11 January 1994 by the respondent when she left the said house. She claimed that she bought those items at a cost of RM3,000 and produced five receipts. She further claimed for the return of the sum of RM20,500 which was kept in a joint account; which she had been forced by the respondent to withdraw and hand to him. To support her claim she produced a copy of the police report lodged by her on 24 January 1994 with regard to the said matter. She denied that half that money kept in the said joint account belonged to the respondent. The respondent on his part claimed that he had made some contributions towards the purchase of a van which the petitioner refuted.

Held:

[1] The petitioner has clearly adduced sufficient documentary evidence to show that she had been working as a masseur from 1983 until February 1995. On the other hand the respondent has failed to prove that he has been working and receiving income and that being so, the petitioner's contention that the respondent was unemployed since 1983 is accepted.

[2] The said house was acquired by the sole effort of the petitioner. There is also nothing to show that the petitioner is holding the said house on trust for the respondent. There is nothing to show that the respondent had made any form of contribution towards living expenses for the family or had looked after the home or had cared for the family. That being so, it would be inequitable to give an order which would incline towards any form of division of the said house.

[3] The documentary evidence adduced seems to lend a bit of support to the respondent's contention that he had made some form of contribution towards the said van. Such contributions do not seem to be substantial but are nevertheless contributions.

[4] The Court made the following orders:

(a) that the marriage is dissolved;

(b) a declaration that the petitioner is entitled to the whole beneficial ownership of the matrimonial property and that the respondent is to deliver vacant possession of the same;

(c) that the respondent return the said set of jewellery to the petitioner or its equivalent value at the time of purchase, namely, RM3,109;

(d) that the petitioner pay the respondent the sum of RM3,189 from the proceeds of the sale of the said motor-van being the amount forwarded by the respondent for purchase of accessories and spare parts; and

(e) that each party is to bear its own costs.

[Petition granted]

Legislation referred to:
Law Reform (Marriage and Divorce) Act 1976, ss. 51(1), 76(2), (3), (4)

For the petitioner - Matthew George; M/s. Gana Muthusamy & Co.
For the respondent - Noordin Hussin; M/s. Tia & Nordin

JUDGMENT

Mohd. Ghazali bin Mohd. Yusoff J:

The petitioner and the respondent were married on 21 July 1980 and have a daughter who is now 19 years of age. The petitioner has filed a petition seeking a dissolution of the marriage on the ground of the respondent's conversion to Islam of 27 December 1993.

The petitioner, if a decree nisi is granted, seeks from the respondent the following ancillary reliefs:

(a) monthly maintenance in the sum of RM600;

(b) that the respondent quit and deliver vacant possession of the matrimonial property, namely, a double-storey low cost terrace house known as No. 2, Jalan Tenang 1, Taman Damai Jaya, Skudai, Johor, to the petitioner;

(c) a declaration that the petitioner is entitled to the whole beneficial ownership of the aforesaid property;

(d) that the respondent deliver and return all movable goods that belong to the petitioner, including a set of jewellery valued at RM3,000, and the petitioner's international passport and driving licence;

(e) that the respondent refund the sum of RM20,500 which had been forcefully taken from the petitioner sometime in January 1994; and

(f) costs.

In her evidence, the petitioner claims that she bought the matrimonial property (hereinafter referred to as "the said house") on 21 June 1989 for the sum of RM22,000 and to support her claim produced the sale and purchase agreement (Exhibit P1) and a copy of the title to the said house (Exhibit P5) which confirms that she was the purchaser. She also produced a receipt for the sum of RM2,200 (Exhibit P2) issued in her name for the down-payment towards the purchase of the said house. She supported her claim that she took a loan for RM17,600 towards the purchase of the said house by producing the loan agreement (Exhibit P3). She claimed that she had been paying the monthly instalments due upon the said loan and insisted that the respondent never made any contribution towards the purchase of the said house nor towards the monthly instalments due upon the said loan. She stated that she left the said house in January 1994.

The petitioner gave evidence that when she married the respondent, the latter was working as a lorry-driver but had in 1983 stopped working and since then had been unemployed. She alleged that since 1983, the respondent has no income and did not make any contribution towards living expenses for the family or provide any form of maintenance to the petitioner and their daughter. She insisted that she had been supporting the respondent and their daughter since then. She claims that from 1981 to 1983 she worked on a part time basis as a seamstress and subsequently from 1983 worked as a masseur at the Bukit Timah Massage Parlour, Singapore, her monthly income as a masseur was between S$3,000 and S$5,000 inclusive of tips and commission. She had to stop work in February 1995 as she was afraid that the respondent would harass her at her place of work. She is currently unemployed.

The petitioner is also praying for an order that the respondent return to her a set of jewellery which had been taken from her on 11 January 1994 by the respondent when she left the said house; she claimed that she bought those items at a cost of RM3,000 and produced five receipts (Exhibits P6A-P6E) to support her claim. She is also claiming for the return of the sum of RM20,500 which was kept in a joint account; she stated that she was forced by the respondent in January 1994 to withdraw the said sum and was forced to hand it to him. To support her claim she produced a copy of the police report lodged by her on 24 January 1994 with regard to the said matter. She denied that half that money kept in the said joint account belonged to the respondent.

Under cross-examination, she agreed that the said house was renovated at a cost of RM30,000 but denied that the respondent had paid for it or made any monetary contribution. She did not agree to suggestion by Counsel that it was the respondent who had purchased the said house but had used her name as due to his age, it would be difficult for him to get a loan. The petitioner also denied that the respondent made contributions towards monthly living expenses for the family and denied that the respondent has been working as a van-driver. She agreed that when she left the said house she took with her a motor-van bearing registration number JCG 446 but insisted that the van belonged to her and was registered in her name; she stated that she had been paying the monthly instalments for the motor-van which had been bought by her on hire-purchase and denied that the respondent is the beneficial owner of the van. She pointed out that the receipts issued by the finance company which financed the hire-purchase (Exhibits D9(1-34)) and produced at the trial by the respondent show that they were issued in her name. She admitted having sold the van for RM23,000 but explained that after deducting the balance of the payments due, she received a net amount of RM11,000. She also agreed that she kept the proceeds and did not split it with the respondent.

The daughter from the marriage of both parties, PW2, gave evidence that she started to work at the age of 13 as a baby-sitter and had left home at the age of 16 to live with a relative. Since the age of 16, she has been working as a hair-dresser. She gave evidence that the respondent did not work and has no income. She stated that when she was attending school, the respondent never provided her with any money. She also stated that her relationship with the respondent was not good as he was always drunk and on some occasions, assaulted the petitioner and her.

In his answer to the petition, the respondent prayed for the following:

(a) that the petition be dismissed;

(b) that the petitioner pays him a lump sum of RM100,000;

(c) that the said house, which is held on trust for him, be disposed and that he is entitled to all proceeds of the sale;

(d) a declaration that he is entitled to the whole beneficial ownership of the said house;

(e) an order that the petitioner do pay the sum of RM25,000 being proceeds from the sale of the said van which was held on trust for him;

(f) a declaration that the respondent is entitled to stay at the said house; and

(g) costs.

The respondent gave evidence that he converted to Islam on 27 December 1993 and stated that as the petitioner did not agree to the conversion, she left the said house. He stated that when he married the petitioner in 1980, he was working in a saw-mill in Singapore and was earning S$1,200 monthly. In 1985, he came to Malaysia and worked as a van driver earning RM1,100 monthly; he claimed that as a van driver, he was ferrying workers to and from their place of work on an illegal basis, i.e., he did not possess a licence or a permit from the relevant authorities to carry on with such an activity. He insisted that he had been working and receiving income ever since he married the petitioner. He claimed that he contributed RM300 monthly towards living expenses for the family from his income of RM1,100.

He claimed that he bought the said house in the petitioner's name as it was difficult for him to get a housing loan from the financial institutions as he was more than 50 years old at the date of the purchase. He insisted that he paid the down-payment and had been paying the monthly instalments until October 1994 when he was advised by his lawyer to cease making further payments as the said house was in the petitioner's name. He also insisted that he paid for the extensive renovations which were made to the said house in 1993, it had cost him RM40,000 and he had paid for it with some contribution from the petitioner.

He also claimed that he bought the said motor-van on hire-purchase in the petitioner's name and had been paying its monthly instalments. In support of his contention, he produced several receipts issued by Mayban Finance Berhad (Exhibits D9(1-34)) and insisted that he made the payments although the receipts were issued in the petitioner's name. To support his claim, he produced an insurance policy (Exhibit D15) which according to him is evidence that he had purchased the motor-van. The respondent also insisted that he paid for all household expenses including water and electricity, quit rent and assessment and produced several receipts to support his claim.

The respondent also produced a copy of a police report which he lodged on 6 February 1994 wherein he claimed that the petitioner had withdrawn the sum of RM10,000 on 1 December 1993 after leaving the said house and had taken away the said motor-van. He denied that the petitioner had paid for the said house from her income as a masseur and even alleged that after the marriage, the petitioner did not work. He also denied having taken the set of jewellery from the petitioner and denied having knowledge of its existence but admitted that he had taken a gold chain from the petitioner which was a gift from him to the petitioner earlier on in the marriage. He also denied that he was in possession of the petitioner's international passport and driving licence.

It is clear that the ground upon which the petition has been brought is based upon s. 51(1) of the said Act which provides that "Where one party to a marriage has converted to Islam, the other party who has not so converted may petition for divorce". This is one of the grounds upon which a person may base his petition, and such a petition may be presented after the expiration of three months from the date of the conversion. In his answer the respondent prayed that the petition be dismissed but at the outset of the trial, his Counsel informed the Court that his client is not contesting the petition for divorce.

With regard to the ancillary reliefs set down in the prayer to the petition, it is clear that these are issues which have to be decided in accordance with the principles laid down in s. 76 of the said Act which reads:

> (1) The Court shall have power, when granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale.
>
> (2) In exercising the power conferred by subsection (1) the Court shall have regard to:
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> (a) the extent of the contribution made by each party in money, property or work towards the acquiring of the assets;
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> (b) any debts owing by either party which were contracted for their joint benefit;
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> (c) the needs of the minor children, if any, of the marriage,
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> and subject to those considerations, the Court shall incline towards equality of division.
>
> (3) The Court shall have power, when granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired during the marriage by the sole effort of one party to the marriage or the sale of any such assets and the division between the parties of the proceeds of sale.
>
> (4) In exercising the power conferred by subsection (3) the Court shall have regard to:
>
> (a) the extent of the contributions made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring the family;
>
> (b) the needs of the minor children, if any, of the marriage;
>
> and subject to these considerations, the Court may divide the assets or the proceeds of sale in such proportions as the Court thinks reasonable; but in any case the party by whose efforts the assets were acquired shall receive a greater proportion.
>
> (5) For the purposes of this section, references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

Section 76 clearly provides where the assets in question had been acquired during the marriage by the joint efforts of both parties, the Court is directed to incline towards equality of division (s. 76(2)) whereas, where the assets in question had been acquired by the sole effort of one party, the Court is directed that that party shall get a greater proportion (s. 76(3) and s. 76(4)). In the instant case, the following assets are in issue, namely:

(a) the said house;

(b) the set of jewellery valued at RM3,000;

(c) the sum of RM20,500 which was withdrawn from the said joint-account; and

(d) the proceeds from the sale of the motor-van, i.e., RM11,000.

It is my finding that the petitioner has clearly adduced sufficient evidence to show that she had been working as a masseur from 1983 until February 1995. She had supported her claim by producing a letter from the Bukit Timah Massage Parlour (Exhibit P11). She also produced a copy of her Work Permit Card issued by the Immigration Department, Singapore (attached to Exhibit P11) wherein it is stated that she is permitted to work at the said massage parlour. It is also stated in the said card that the first date of application for the work permit was 29 July 1983. She has also produced two copies of the notice of assessment issued by the Comptroller of Income Tax, Singapore for the years 1993 and 1994 (Exhibits P12 and P13) which would confirm that she was working in Singapore and is a tax-payer.

On the other hand, the respondent has not, upon a balance of probabilities, shown that he has been receiving some form of income since 1983 neither has he shown any evidence that he has some form of savings which could at least substantiate his claims that he had made contributions towards the acquiring of the assets concerned. He claimed that he had purchased the house in the petitioner's name but did not adduce any evidence which can show that he had provided the funds, e.g., a statement of account from the bank or a bank savings book to show that he had made withdrawals to finance the purchase. He also claimed that he had paid the major share for the house renovation works but has not produced a single receipt to substantiate his claim.

The respondent also claimed that he contributed RM300 monthly for the family's living expenses, and had paid the water, electricity, quit rent and assessment bills. With regard to the receipts produced for payments made for quit rent (Exhibits D23A-D23C) and assessment (Exhibits D23A-D23B, D24A-D24B and D29A-D29B), no name is mentioned therein. Most of the other receipts produced at the trial were also issued in the petitioner's name. The only receipts issued in the respondent's name were the electricity bills (Exhibits D7A-D7K and D25A-D25D); the petitioner admitted that these bills were paid by the respondent but explained that she had provided the money as the respondent had no income of his own. The petitioner insisted that she had provided the money to the respondent to pay all the household bills as she had to go to work and did not have the time to do so. Under the circumstances, I accept her claim. With regard to the RM300 monthly contribution, I find that there is no evidence at all that the respondent had made such contributions.

With regard to the respondent's contention that he had purchased the van, he produced, as stated earlier, an insurance policy (Exhibit D15) to support his claim. However, upon perusal, I noted that the said insurance policy was not the usual vehicle insurance policy but a personal accident policy wherein the respondent was named as the insured party for the year 1993/1994; the policy did not even state the vehicle registration number. However, the

respondent also produced several receipts amounting to RM3,189 (Exhibits D32A-D32G) which included payments made for the purchase of accessories and spare-parts for the motor-van and claimed that he had paid for the purchase of these items.

With regard to the money deposited in the joint account, the respondent admitted that he withdrew RM10,000 but insisted that it was to pay for the renovation works towards the said house; this seems to be contrary to the claim made by the petitioner, namely, that she was forced by the respondent to withdraw the total amount of RM20,500 and had handed over that sum to him. However, it must be noted that neither the petitioner nor the respondent has furnished any documentary evidence to show that such a joint account existed and that such a withdrawal had been made. With regard to the set of jewellery, the respondent has denied that he has taken it; he claimed that he did not even know of its existence. The petitioner, however, has produced receipts to show that the set of jewellery exists.

With regard to the respondent's contention that he has been working and hence receiving income, I find that this cannot be clearly substantiated from the evidence. From the various documents produced at the trial. I cannot find anything which can be relied upon to ascertain what was his actual occupation, if any, e.g.:

(i) in the marriage certificate (Exhibit "KYG1") it is stated that the respondent is a hawker;

(ii) in the insurance policy (Exhibit D15) it is stated that he is a "Fish Dealer Own Driver"; and

(iii) in his application form for conversion to Islam (Exhibit "KYG3") he has stated that he works in a saw-mill; he has also stated therein that his monthly income is RM2,000 and that he is a widower/divorcee ("duda") (which he was not on that date).

Under the circumstances, I am of the view that the respondent has failed to prove that he has been working and receiving income and that being so, I would accept the petitioner's contention that the respondent was unemployed since 1983.

I am also of the view that the respondent did not seem to be very concerned with the upbringing of their daughter, PW2. PW2 gave evidence that she left home and went to work at the age of 13. When she was 16, she started to work as a hair-dresser. The respondent alleged that she ran away from home but there is no evidence to show that the respondent made any effort to persuade her to return home or to continue with her schooling; I would have thought that that would be his responsibility as a parent. He even denied having knowledge of the petitioner's occupation as a masseur which, under the circumstances, I find it difficult to accept.

With regard to the said house, it is my finding that it was acquired by the sole effort of the petitioner. There is also nothing to show that the petitioner is holding the said house on trust for the respondent. I cannot also find anything to show that the respondent had made any form of contribution towards living expenses for the family or had looked after the home or had cared for the family. That being so I am of the view that it would be inequitable to give an order which would incline towards any form of division of the said house.

With regard to the said motor-van, I have my reservations towards the respondent's claim that he had paid the bills for the purchase of accessories and spare parts for the said motor-van but the documentary evidence adduced seems to lend a bit of support to his contention that he had made some form of contribution towards the said van, which to me, do not seem

to be substantial but are nevertheless contributions. This would pose a very practicable problem for the Court to decide as to what can amount to a reasonable proportion in the division of the proceeds from the sale of the said van.

Under the circumstances, I make the following orders:

(a) that the marriage is dissolved;

(b) a declaration that the petitioner is entitled to the whole beneficial ownership of the matrimonial property and that the respondent is to deliver vacant possession of the same;

(c) that the respondent return the said set of jewellery to the petitioner or its equivalent value at the time of purchase, namely, RM3,109;

(d) that the petitioner pay the respondent the sum of RM3,189 from the proceeds of the sale of the said motor-van being the amount forwarded by the respondent for purchase of accessories and spare parts; and

(e) that each party is to bear its own costs.

There is no order in relation to the said joint account as both parties have failed to prove its existence and the actual amount contained therein. There is also no order with regard to the petitioner's claim for maintenance since Counsel has informed the Court that the petitioner is not pursuing the matter. With regard to the international passport and driving licence, I do not intend to make any order as these are not assets. If at all it is true that the respondent has retained these documents, I would like to remind him that the passport is the property of the Government of Malaysia; the petitioner's driving licence should also be returned to her as I cannot see any reason for the respondent to retain it, if he has done so.